

Exhibit 1

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 SHATEQUA LEGUETTE, et al
4 PLAINTIFFS

17 CV 7599 (JBW)

5 versus

U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York
January 30, 2019
10:00 a. m.

6 SCHWAN'S COMPANY, et al,

7 DEFENDANTS.
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8 TRANSCRIPT OF CIVIL CAUSE FOR MOTION HEARINGL
9 BEFORE THE HONORABLE JACK WEINSTEIN
10 UNITED STATES DISTRICT JUDGE

11 APPEARANCES

12 Attorney for Plaintiff:

13 SHEEHAN & ASSOCIATES, PC
14 505 Northern Boulevard, Suite 311
Great Neck, New York 11021
15 BY: **SPENCER SHEEHAN, ESQ.**

16 Attorneys for Defendants:

17 FOLEY HOAG, LLP
18 1540 Broadway, 23rd Floor
New York, New York 10036
19 BY: AUGUST HORVATH, ESQ.
MITAL PATEL, ESQ.

20 ALSO PRESENT: SHATEQUA LEGUETTE

JENNIFER HOLMBERG

21 Court Reporter:

22 LISA SCHMID, CCR, RMR
Official Court Reporter
225 Cadman Plaza East
23 Brooklyn, New York 11201
Phone: 718-613-2644 Fax: 718-613-2379

24 Proceedings recorded by mechanical stenography. Transcript
25 produced by computer-aided transcription.

1 THE COURT: And what other states besides New York,
2 Queens, do you buy pies in?

3 MS. HOLMBERG: Oh, well. I really don't travel that
4 much, so I'm from here, so here.

5 THE COURT: But if you want another pie, you would
6 buy it, I take it, in New York city some place?

7 MS. LEGUETTE: (Nods head affirmatively.)

8 THE COURT: Maybe in Queens? Queens, that's where
9 you live?

10 MS. LEGUETTE: I live in Queens, yes.

11 THE COURT: Well, I am inclined to do two things.

12 One, find that this is not an adequate person to represent the
13 class in the United States, and in any event, in view of the
14 differences in law, I'm not sure that it's an adequate
15 representation that I can deal with, when I know from other
16 cases, you'll find that the law is different in many of the
17 states. So, I'm inclined to sever the Florida representation.

18 You ever buy a pie in Florida?

19 MS. LEGUETTE: No.

20 THE COURT: Sever the Florida case, and send it
21 down.

22 You have a different representation for Florida,
23 don't you?

24 MR. SHEEHAN: Yes, Your Honor. The plaintiff
25 representative, Ms. Miller, who lives in Florida,

1 St. Petersburg, and who I contacted after the most recent
2 docket order, informed me that due to her husband's recent
3 release from the hospital and her intense fear and dislike of
4 flying, she would not be able to be here this week.

5 THE COURT: But she still wants to represent --

6 MR. SHEEHAN: Oh, yes, sir.

7 THE COURT: -- Florida?

8 MR. SHEEHAN: Absolutely. And I told her I would
9 convey her sentiments to me, and I would pass that along to
10 the Court, and I can bring her on the phone, and --

11 THE COURT: She lives in Florida?

12 MR. SHEEHAN: Yes, sir.

13 THE COURT: And if she bought pies, it's likely to
14 be in Florida?

15 MR. SHEEHAN: That's the only place.

16 THE COURT: Because of her flying problem, fear of
17 flying?

18 MR. SHEEHAN: I don't know how she got to Florida.

19 THE COURT: Fear of lying --

20 MR. SHEEHAN: So she says.

21 THE COURT: -- that has nothing to do with fear of
22 flying.

23 Well, I'm going to dismiss the representation of the
24 United States by this one plaintiff. She simply can't do it.
25 She's a local lady from Queens -- and neither can the

1 representative from Florida represent all those in the other
2 48 states.

3 But with respect to Florida, I will permit you, if
4 this is what you want to do, to sever the Florida case and
5 transfer it to Florida. But I think that's going to cause
6 both parties a good deal of legal problems.

7 You don't have a representative in Florida to handle
8 this kind of case, do you?

9 MR. HORVATH: No, Your Honor, but we can probably
10 manage somehow.

11 THE COURT: I understand.

12 Well, anyway, that's what I'll do.

13 Do you have any objection to those two?

14 MR. HORVATH: No, Your Honor. We don't.

15 THE COURT: Do you object?

16 MR. SHEEHAN: I don't quite understand the reason
17 for severing, but of course, you know, we accept Your Honor's
18 decision.

19 THE COURT: All right. The Florida case is severed.
20 You'll file a new complaint, putting everything on Florida in
21 one set of papers, and then submit an order transferring the
22 case as indicated by the new pleadings separated from the old
23 pleadings, and transferring it to Florida.

24 What district in Florida? Do you know?

25 MR. SHEEHAN: I am not certain, but I believe

1 it's -- St. Petersburg is like the central middle -- or no,
2 maybe it's on the upper right.

3 THE COURT: Check on it.

4 MR. SHEEHAN: Yes.

5 THE COURT: Do you object to that order?

6 MR. SHEEHAN: I don't object, Your Honor. I just
7 wonder if it would be the best use of, you know, the
8 plaintiff's resources, having to prosecute two separate cases,
9 as opposed to, you know, the Florida --

10 THE COURT: It's a different plaintiff.

11 MR. SHEEHAN: Yes. Yes, it is, but it would
12 required retaining counsel in Florida, you know, because I am
13 not licensed to practice law in Florida. And that would
14 probably come with a lot of complications and inefficiencies
15 that's might make it more challenging to continue on --

16 THE COURT: Yes.

17 MR. SHEEHAN: -- in that regard.

18 THE COURT: Plus Florida law is not precisely like
19 the New York law, is it?

20 MR. SHEEHAN: There are some differences, of course,
21 yes.

22 THE COURT: Yes. All right. I'll issue an order,
23 as follows: The case is dismissed as a class action
24 representing consumers throughout the United States, except in
25 New York and Florida.

1 As to Florida representation, plaintiff, if he
2 wishes to go forward with the Florida aspect of the case, will
3 provide a separate set of papers for the Florida case, inform
4 the Court that it's here and I will direct the court clerk to
5 send it to -- transfer the case, as so narrow, to Florida. So
6 that leaves us only with a New York case, right?

7 And that's satisfactory to you for the time being?

8 MR. HORVATH: Yes. Yes, that's fine. I mean, I
9 would prefer to get rid of the case on the merits, obviously,
10 but --

11 THE COURT: Well, I can't allow the case to go
12 forward on this representation.

13 Whether you want to continue with it is up to you.

14 From prior cases, I know that the law is so
15 different in many states on the issue such as posed here, that
16 it's unlikely to be handled satisfactory in one class --
17 national class action, particularly in light of the fact that
18 the pies sell retail for under \$6. So we'll issue an order to
19 that effect.

20 Now, with respect to the New York part of the case,
21 there is really nothing I can do until discovery is completed
22 on class action and on the main case, which is one plaintiff,
23 one pie, bought by the plaintiff who is not satisfied that the
24 labeling on the box adequately reflects the butter in the pie,
25 crust, right?

1 MS. LEGUETTE: Yes.

2 THE COURT: So that will have to go forward, and the
3 Second Circuit has recently held, as I understand it, that
4 before dealing with the certification issue, discovery at
5 least on that issue should be completed.

6 We have that case, do we not?

7 LAW CLERK: (Nods head affirmatively.)

8 THE COURT: Yes.

9 Now, I don't see anything further that I can do on
10 the Motion for Summary Judgment. I'll hold it in abeyance,
11 and I'll allow the parties to bring it to the Court's
12 attention for argument based on a new set of papers, which
13 will include all of the discovery, and that will be the end of
14 our Motion for Summary Judgment discussion. Okay?

15 MR. HORVATH: Okay.

16 THE COURT: Okay?

17 MR. SHEEHAN: Yes, Your Honor.

18 THE COURT: Now, let me -- this matter -- there's a
19 great judge. He's dead now. I guess all the great judges are
20 dead now -- Learned Hand. And he -- I'm paraphrasing -- he
21 said that he would avoid litigation at all costs, because it
22 takes a lot of time and money, and so on.

23 (Pause in proceedings.)

24 THE COURT: Will you be able to finance this case,
25 madam?